

**CITY COUNCIL OF THE CITY OF SAN DIEGO
SUPPLEMENTAL DOCKET NUMBER 1
FOR THE REGULAR MEETING OF
MONDAY, MAY 1, 2006 AT 2:00 P.M.
CITY ADMINISTRATION BUILDING
COUNCIL CHAMBERS – 12TH FLOOR
202 “C” STREET
SAN DIEGO, CA 92101**

SPECIAL ORDERS OF BUSINESS

ITEM-S400: Reconsideration of the Heller Ehrman Matter from the April 18, 2006 City Council Meeting.

(See memorandum M-06-04-19 from Councilmember Madaffer dated April 25, 2006.)

COUNCILMEMBER MADAFFER’S RECOMMENDATION:

Subitem-A: Waiving the Permanent Rules of the City Council, Section 22.0101 of the San Diego Municipal Code.

NOTE: 6 votes required.

Subitem-B: Reconsidering final payment to Heller Ehrman LLP, for services rendered in connection with the lawsuit San Diego City Employees’ Retirement System v. Michael Aguirre and the lawsuit City of San Diego v. Callan Associates, Inc.

- 1) Final Payment to Heller Ehrman LLP for Services Rendered in Connection with the lawsuit San Diego City Employees’ Retirement System v. City Attorney Michael Aguirre, et al. (City Council originally considered this item at its meeting of Tuesday, April 18, 2006, Item 331.)
- 2) Final Payment to Heller Ehrman LLP for Services Rendered in Connection with the lawsuit City of San Diego v. Callan Associates, Inc. et al. (City Council originally considered this item at its meeting of Tuesday, April 18, 2006, Item 332.)

NOTE: If the matter is to be reconsidered, time has been reserved for the item to be heard on Tuesday, May 16, 2006.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS
RESOLUTIONS:

ITEM-S401: Authorizing Expenditure of Funds Needed to Comply with Court Order in SR-56 Lawsuit.

(State Route 56 Corridor, Torrey Highlands Community Area. District 1.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2006-918)

Amending the Fiscal Year 2006 Capital Improvement Program Budget for CIP-52-463.0 by increasing the budget amount by \$10,410,800;

Authorizing the appropriation of an amount not to exceed \$10,410,800 from General Fund Unappropriated Reserves, Fund 100, solely and exclusively, for the purpose of providing funds for the right-of-way acquisitions costs for CIP-52-463.0;

Authorizing the issuance of a check in the amount of \$10,410,800, from CIP-52-463.0, Fund 100, made payable to the State Treasury Condemnation Fund, to satisfy a court ordered payment in the State Route 56 eminent domain case, City of San Diego v. D.R. Horton, et al., San Diego Superior Court Case No. GIC777603-1, contingent upon the City Auditor and Comptroller certifying that the funds are available;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves.

STAFF SUPPORTING INFORMATION:

In November 2001, the City filed a Complaint in Eminent Domain against D.R. Horton to acquire 12.31 acres of a 39.38 acre parcel for the construction of State Route 56. The only issue relates to the "just compensation" to which D.R. Horton is entitled (the property owner's appraiser has valued the property at \$16,000,000 and the City's appraiser has valued the property at \$4,925,000). D.R. Horton does not challenge the City's authority to acquire the property by eminent domain.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)
RESOLUTIONS: (Continued)

ITEM-S401: (Continued)

STAFF SUPPORTING INFORMATION: (Continued)

The case came for trial in August 2003, and the jury verdict was \$5,589,200, which was paid. The trial judge granted the property owner's motion for a new trial, which was upheld on appeal. The matter has been set for a retrial on November 17, 2006. In preparation for the retrial, the property owner made a motion in court to increase the deposit of probable compensation to \$16,000,000, which was granted. Therefore, the City must deposit an additional \$10,410,800 (\$16,000,000 minus the \$5,589,200 that was already paid) with the State Treasury Condemnation Fund by May 5, 2006.

FISCAL CONSIDERATIONS:

There is not enough money remaining in the State Route 56 Project funds (CIP-52-463.0) to make the additional \$10,410,800 deposit. The General Fund Unappropriated Reserves has been identified to make the court-ordered deposit. Staff is exploring alternate funding sources to repay this amount to the General Fund Unappropriated Reserves.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Council was briefed on the status of the litigation in Closed Session on April 4, 2006.

Goldstone/Haas

Aud. Cert. 2600767.

Staff: Leslie A. FitzGerald – (619) 533-5804

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS

ITEM-S402: Impasse Procedure.

MAYOR SANDERS' RECOMMENDATION:

Providing an impasse procedure, if necessary, for Management and Police Officers Association currently involved in contract negotiations.

SUPPORTING INFORMATION:

The current MOU and Council Policy 300-6 provide that Labor Organizations have a right to Council hearing on any issues at impasse at the conclusion of negotiations.

The purpose of the impasse meeting shall be to identify and specify in writing the issue or issues that remain in dispute according to Council Policy 300-6.

Michell/Froman

ADOPTION AGENDA, DISCUSSION, HEARINGS
NOTICED HEARINGS:

ITEM-S403: Thorn Street Public Right-of-Way Vacation.

The project proposes the vacation of an unimproved portion of the Thorn Street right-of-way, within the Uptown Community Plan Area. The section of right-of-way proposed for vacation is 20 feet wide and 130 feet in length and is located just east of the intersection of Thorn Street and Falcon Street, west of Reynard Way, between the existing single-family structures at 3305 and 3275 Falcon Street. The area to be vacated has never been utilized as a street and would not provide a logical connection to any other street. Additionally, the section of the Thorn Street right-of-way located immediately east of the site has already been vacated due to the presence of steep slopes which prohibits street development. The portion of Thorn Street which is proposed to be vacated is impassable to vehicle traffic and does not provide access to any abutting properties or rights-of-way.

(Uptown Community Plan Area. District 2.)

(Continued from the meeting of April 24, 2006, Item 203, at the request of Councilmember Faulconer, for further review.)

NOTE: Hearing open. No public testimony taken on April 24, 2006.

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2006-869)

Adoption of a Resolution adopting the findings with respect to Public Right-of-Way Vacation Permit No. 45365;

That this activity is exempt from CEQA pursuant to Section 153059(c)(3) of the State CEQA Guidelines (Minor Alterations in Land Use Alterations).

STAFF SUPPORTING INFORMATION:

The project proposes the vacation of an unimproved portion of the Thorn Street right-of way, within the Uptown Community Plan Area. This Public right-of-way Vacation is being requested by the adjacent property owner at 3305 Falcon Street.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)
NOTICED HEARINGS: (Continued)

ITEM-S403: (Continued)

STAFF SUPPORTING INFORMATION: (Continued)

The right-of-way proposed for vacation is 20 feet wide and 130 feet in length and is located just east of the intersection of Thorn Street and Falcon Street, west of Reynard Way. This section of right-of-way is currently unimproved and is utilized as yard area for the two single-family residences that border this right-of-way. The remaining portion of the Thorn Street right-of-way located between the subject portion and Reynard Way was previously vacated in 1980, as the sloping topography of the area made development of this portion impractical.

Staff has concluded that the purpose and intent for which the public right-of-way was originally dedicated is no longer met. The area to be vacated has never been utilized as a street and would not provide a logical connection to any other street. Additionally, the section of the Thorn Street right-of-way located immediately east of the site has already been vacated due to the presence of steep slopes which prohibits street development. The portion of Thorn Street which is proposed to be vacated is impassable to vehicle traffic and does not provide access to any abutting properties of rights-of-way.

The proposed vacation meets all of the criteria that would allow a decision maker to affirm the required findings. The portion of the street proposed to be vacated does not provide access to any of the abutting properties and the adjacent hillside makes it unlikely that the Street would be improved in the future to a degree that would facilitate vehicular access. The abutting property owners would benefit from the closure by regaining the vacated portion of the right-of-way and the ability to effect repairs to their property. The proposed vacation would not adversely affect the Uptown Plan and the proposed vacation would not affect existing access to properties.

Regulatory Framework

The Land Development Code establishes a process for approving applications to vacate public rights-of-way and includes the applicable findings that a decision maker must make to approve the requested vacation (Attachment 6). The findings generally establish that there is no present or prospective use for the right-of-way, either for the use for which it was intended, or a public use of a similar nature; that the public will benefit from the vacation by the improved use of the land; that the vacation will not adversely affect the applicable land use plan; and that the public facility for which the right-of-way was originally acquired will not be detrimentally affected by the vacation. As described in Section 125.0910(b) and 125.0940(c) of the Municipal Code, this section of right-of-way is eligible to be summarily vacated, therefore, a recommendation by the Planning Commission is not required.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-S403: (Continued)

STAFF SUPPORTING INFORMATION: (Continued)

Community Plan

The subject site is designated for Low Density Residential and Open Space by the Uptown Community Plan. The Community Plan states that unimproved street right-of-ways should be vacated only when determined that the right-of-way will not be needed in the future for public access to individual parcels or to public open space, to provide public parking, to provide open space for public use, or to maintain views of open space from the public right-of-way (pg. 170). The area where the street vacation is proposed is unimproved (Appendix C, pg. 216). Staff has determined that the unimproved right-of-way cannot be used for the purposes listed above and has limited views into the area designated as Open Space. Therefore, the request for the street vacation at this site would not adversely affect the community plan.

PREVIOUS COMMITTEE ACTION:

None.

FISCAL CONSIDERATIONS:

There is no fiscal impact. The project is processed through a deposit account paid for by the applicant.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On March 1, 2005, the Uptown Community Planning Group voted 13-0-1 to recommend approval of the proposed right-of-way vacation.

KEY STAKEHOLDERS AND PROJECTED IMPACTS

Michael and Tina Valenti, Applicant (Attachment 4) and the Nathan Family Trust, adjacent property owner.

Halbert/Waring/PG

Staff: Paul Godwin – (619) 446-5103
David Miller - Deputy City Attorney

NOTE: This item is not subject to Mayor's veto.